IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 92 of 2004
with
CRIMINAL REVISION APPLICATION No 102 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYESHBHAI @ PANCHABHAI MULJIBHAI SATODIYA
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Revision Application No. 92 of 2004
MR PM THAKKAR WITH MR YOGESH S LAKHANI for Applicant
MR PR ABICHANDANI, APP for Opponent No. 1
MR KJ SHETHNA for Opponent No. 2
MR ND NANAVATI FOR NANAVATY ADVOCATES for Opponent No. 3
MR RR TRIVEDI for Opponent No. 4
MR BHAVESH P TRIVEDI for Opponent No. 4

2. Criminal Revision Application No. 102 of 2004
MR PR ABICHANDANI, APP for Applicant No. 1
MR KJ SHETHNA for Opponent No.1
MR ND NANAVATI FOR NANAVATY ADVOCATES for Opponent No.2

MR RR TRIVEDI for Opponent No.3.3
MR BHAVESH P TRIVEDI for Opponent No.3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/03/2004

COMMON C.A.V. JUDGEMENT

Rule. Mr.P.R.Abichandani, learned APP for the opponent No.1 of Cri.Rev.Appln.No.92 of 2004, Mr.K.J.Shethna, learned Senior Counsel for the opponent No.2 of Cri.Rev.Appln.No.92 of 2004 and opponent No.1 of Cri.Rev.Appln.No.102 of 2004, Mr.N.D.Nanavati, learned Senior Counsel for opponent No.3 of Cri.Rev.Appln.No.92 of 2004 and opponent No.2 of Cri.Rev.Appln.No.102 of 2004, Mr.R.R.Trivedi, learned counsel for the opponent No.4 of Cri.Rev.Appln.No.92 of 2004 and opponent No.3 of Cri.Rev.Appln.No.102 of 2004 respectively waive service of notice of rule.

2. Criminal Revision Application No.92 of 2004 has been filed by the original complainant-Jayeshbhai Panchabhai Muljibhai Satodiya while Criminal Revision Application No.102 of 2004 has been filed by the State of Gujarat under Sec.397 read with Sec.401 and also read with Sec.439(2) of the Code of Criminal Procedure being aggrieved and dissatisfied with the judgment and order dated 17-2-2004 passed by the learned Addl. Sessions Judge, Gondal, in Criminal Misc. Application No.28 of 2004 whereby opponent Nos.2 to 4 of Cri.Rev.Appln.No.92 of 2004 who are opponent Nos.1 to 3 respectively in Cri.Rev.Appln.No.102 of 2004 were granted anticipatory bail.

3. Since both the Criminal Revision Applications arise out of an order dated 17-2-2004 passed by the learned Addl. Sessions Judge, Gondal, in Criminal Misc. Application No.28 of 2004 in connection with Gondal City Police Station Crime Register No.I-25 of 2004, with the consent of the learned counsels appearing for the respective parties, I have heard these matters together and are being decided by this common judgment and order.

4. The facts in short as described in the complaint are that on 8-2-2004 at about 8.30 p.m. the deceased Nilesh was travelling together with the complainant Jayeshbhai @ Panchabhai Muljibhai Satodiya and Ramjibhai Marakana in their Mahindra Utility Jeep Car. When they reached behind Central Talkies on Devpara Road, Gondal, a

car overtook them. From the said car, Jayrajsinh, Amarjitsinh and Bhagat, brother of Vikramsinh Rana, got down with fire arms and Jayrajsinh Jadeja fired four rounds towards complainant and others. Due to firing, the complainant received injuries and glass window of the jeep car was broken. To save their lives, Nilesh started the Utility Jeep Car and tried to flee away when Jayrajsinh again fired as a result of which, Nilesh received serious injuries and lost control over the Jeep Car and dashed with Balero Car as a result of that, Utility Jeep Car dashed on the wall of girls school and the complainant and Ramjibhai while running away looked at the back when they have seen the accused persons numbering 14-15 were causing injuries on Nilesh with the weapons like dharia, sword, gupti. The complainant and Ramjibhai hid themselves into the urinal of the town hall. After about an hour, Ramjibhai was not in a position to walk. The complainant came out of the town hall and went to Charodi gate, hired a rickshaw and went near to his house where he found Vinubhai and other persons standing. He informed Vinubhai about the incident and they came to the town hall. From there, complainant went to file the complainant along with Vinubhai. Nilesh succumbed to the injuries sustained by him. The complaint was registered as Crime Register No.I-25 of 2004 with Gondal City Police Station for the alleged commission of offences punishable under Secs.302, 143, 147, 148, 149, 341 of IPC, Sec.25(1)(A) of Arms Act and Sec.135 of the Bombay Police Act against the accused Nos.1,2 and 3. Thereafter, by way of applications dated 11-2-2004 and 12-2-2004, Sec.27 of the Arms Act as well as Secs.307 and 120-B of IPC respectively were added. As the accused were not available, summons under Sec.160 of the Code of Criminal Procedure (hereinafter referred to as the 'Code' for short) was issued against accused No.1. He did not respond to the same. The accused preferred application under Sec.438 of the Code for anticipatory bail numbered as Cri.Misc.Appln.No.28 of 2004. After giving opportunity to the parties concerned, the learned Addl. Sessions Judge, Gondal, vide order dated 17-2-2004 granted anticipatory bail to the present opponents-accused which is giving rise to these revision applications.

5. The contentions raised in respective revision applications as synopsized are that initially when the complaint was recorded by Police Sub-Inspector, Gondal City Police Station, Shri V.V.Gohil, CPI, a close relative of Amarjitsinh Anirudhsinh Jadeja was present there and influenced in recording of the complaint. The complainant being an illiterate labourer was not made

aware of the time of incident as mentioned in the FIR and though his signature was taken, he was not given copy of the FIR as required under Sec.154 of the Code. The incident happened at about 10.00 p.m. and it was stated so in his further statement recorded specifying the roles played by the respective accused with their weapons. In the report dated 11-2-2004 of the Police Inspector, LCB Rajkot (Rural) sent to the learned Magistrate, Gondal also, time of incident was shown to be 22.00 hours. Another injured witness Ramjibhai Marakana, who received severe injuries and fractures also clearly stated before the investigating officer the time of incident to be 2200 hours wherein also role of the accused Nos.1 to 3 and other persons were specifically mentioned. Summons under Sec.160 of the Code was issued to accused Jayrajsinh Temubha Jadeja, a sitting MLA. Since he did not appear inspite of the summons served upon him, further summons were issued. Since the impugned order is passed without considering the facts and circumstances of the case, antecedents of the accused persons and the detailed affidavits filed by the investigating officer, the injured eye witness Ramjibhai and written submissions by the learned APP made on behalf of the complainant opposing grant of anticipatory bail before the court below, it is perverse, illegal, improper, unjust. The learned Judge has considered the defense of alibi raised on behalf of the accused and has given unnecessary weightage to the time mentioned in the FIR as 8.30 p.m. without taking into consideration further statement of the complainant, statements of the injured eye witness and other witnesses and also the mobile call chart. Name of Jayantibhai Savjibhai Dhol was also named by the injured eye witness Ramjibhai in his statement. Learned Judge has failed to consider the aspect that since number of persons were simultaneously attacking, it was impossible for the complainant to state as to which weapon was used by which accused, however, the fact is that due to firing done by the accused, injuries were sustained by the deceased, injured and the complainant. Learned Judge has given undue weightage on the point of alibi. Granting anticipatory bail in this type of serious offence would not only demoralize the investigating agency but would be detrimental to the whole investigation including taking the accused on remand for custodial interrogation and a mechanical order has been passed by the learned Judge ignoring the social impact. Even while passing the order, the court below has ignored the material facts that investigating agencies are entitled to pray for police custody of the accused and, therefore, it has not been reflected in his order but while summarizing the order in para 4, he has

mentioned that the Police Officer at the same time is not made powerless to seek the custody of the accused under Sec.167(1) of the Code. Instead of directing the accused to remain present before the investigating agency, they were directed to appear before the Police Officer within 30 days from the date of order and to obtain regular bail within 15 days (instead of 10 days) from the date of release. Since the order passed by the learned Judge is contrary to law laid down by the High Court as well as the Apex Court and ignoring the materials on record, it is prayed that same may be quashed and set aside.

6. Separate affidavits have been filed by the respective accused which are on record. Xerox copies of certain statements of witnesses and other evidence produced by the State are also on record.

7. In the affidavits affirmed by the accused Jayrajsinh Temubha Jadeja in both these matters, he has denied the allegations made by the complainant and the State in respective applications. It is contended inter alia that summons under Sec.160 of the Code was issued to him but as his office at Gondal and his MLA quarter were raided by police, he believed that under the guise of calling him as a witness, he might be arrested and hence, he could not remain present before the investigating officer. It is denied that police is working under influence particularly of one Vinubhai Singhala who is his arch enemy. The State has changed time of commission of offence to 10.00 p.m. To show that FIR was not much delayed and as complainant was knowing that he would come out from valid defense of alibi, allegations were made even against the police officer. It is contended that complainant is an accused in many cases. It is contended that since he got the BJP ticket and Vinubhai Singhala could not get it though tried twice, Vinubhai is involving him and others into the serious crime in question. As far as antecedents referred to in the affidavit filed by I.O. in the trial court in Column No.27 is concerned, it is contended that cases at Sr.Nos.1 to 6 and Nos.9 and 10 resulted into acquittal while Sr.Nos.7,8 and 11 are pending for trial. It is submitted that he is not related to late Shri Vikramsinh Rana. It is also submitted that there is no scope of tampering with the evidence as they consist of interested witnesses and expert evidence.

8. In the affidavits of accused Amarjitsinh Anirudhsinh Jadeja in both the matters, it is inter alia contended that both these revision applications are not maintainable and hence, they are required to be

dismissed. It is contended that there are material contradictions in the evidence so far collected by the prosecution regarding the time of incident, attributing and identifying the weapons used in the incident and also in stating the vehicle in which allegedly the accused have arrived at the place of incident which prima-facie shakes the prosecution case qua him specially in the background of the fact that the FIR has been lodged in the presence of one Vinubhai Singhala who happens to be the arch rival in politics of accused Jayrajsinh Temubha Jadeja and, therefore, probability of his false implication cannot be ruled out. It is further contended that chart of calls either made or received on the mobile phone of the deceased are from persons like Vinubhai and others who are their rivals. The discrepancy in the prosecution case is not a minor but a material contradiction. Even the further statement of the complainant goes against the prosecution and if the entire prosecution case is believed as it is, then also, accused cannot be sent to judicial custody on the basis of such materials. It is further contended that there is no incriminating material implicating against him. He is not even named in the FIR nor any role is attributed in the FIR. He is a person having deep political and social roots in the society and, therefore, it cannot be believed that though he was present on the spot but not identified. He has been implicated falsely after due deliberations. It is further contended that he is ready to fully cooperate with the investigation and will not indulge in any activities which may prejudice the prosecution or its witnesses and, therefore, only on the ground of past antecedents in which he was exonerated by the competent court, he may not be directed to keep in custody on the basis of such a complaint wherein he has been falsely implicated by his political rivals.

9. In the affidavits of accused Jayantibhai Savjibhai Dhol in both the revisions, the allegations and contentions were denied. His affidavits contain almost identical contentions and submissions as have been raised by the accused Jayrajsinh Temubha Jadeja and Amarjitsinh Anirudhsinh Jadeja. It is contended inter alia that contradictions in stating the time of occurrence of incident in FIR as well as in further statement reveal that complainant has suppressed something regarding the occurrence of incident. Specific roles and weapons are attributed in the FIR contrary to the same in the further statement. Mere using of mobile phone of deceased Nilesh upto 10.00 p.m. is not a material to indicate that the incident occurred at 10.00 p.m. in view of the possibility of the phone being used by some other person.

Police investigating agency is informed after 5 or 3 hours of the incident though the incident occurred in the chowk. Accused have deep root in the society and are not likely to tamper with evidence or jump jail. There is a difference between granting of regular or anticipatory bail and cancellation thereof. Since the discretion exercised by the learned Judge is not found to be with ulterior motive, same may not be interfered. It is contended that CPI, Mr.V.V.Gohil, is not related to Amarjitsinh Anirudhsinh Jadeja. Complainant being an illiterate and labourer is also denied. It is contended that complainant is also having sound criminal track record. It is contended that since the summons under Sec.160 issued by the investigating agency was only to arrest the accused, they did not appear before the authority and a bare reading of the order of the court below clearly establishes that the entire material on record have been appreciated while considering the application for anticipatory bail. It is submitted that court has considered the affidavit filed by the complainant, injured and the investigating officer and also the submissions made by learned APP. It is further contended that at the time of deciding the application for anticipatory bail, Sessions Court was not expected to deal with each and every aspect of the prosecution case. A bare reading of the order also shows that all the materials have been considered by the learned Judge. The plea of alibi raised by the accused would be relevant as a specific case of false implication and, therefore, same deserves to be considered while appreciating the case of the accused. It is submitted that by granting anticipatory bail, investigation is not stayed and the investigating officers will have powers to seek remand of the accused. It is also submitted that averments with regard to perversity of the order are wholly baseless and unsustainable and it is within the scope of Sec.438 of the Code. As regards criminal antecedents, it is contended that offence under Sec.188 of IPC was registered in 1998 when the elections were to be held while other offences are of the year 2001-2002 which are yet to be tried. Since there are no allegations against him either in the FIR or in the affidavit of investigating agency attributing specific role, he being the Chairman of the bank in Gondal may not be directed to face custody on the basis of the complaint filed by the political rivals and hence, it is requested that both these revisions may be dismissed.

10. Heard Mr.P.M.Thakkar with Mr.Y.S.Lakhani, learned Senior Counsel for the applicant in Cri.Rev.Appln.No.92 of 2004, Mr.P.R.Abichandani, learned APP for the

applicant-State in Cri.Rev.Appln.No.102 of 2004 and the opponent No.1 in Cri.Rev.Appln.No.92 of 2004, Mr.K.J.Shethna, learned Senior Counsel for the opponent No.2 in Cri.Rev.Appln.No.92 of 2004 and the opponent No.1 in Cri.Rev.Appln.No.102 of 2004, Mr.N.D.Nanavati, learned Senior Counsel for the opponent No.3 in Cri.Rev.Appln.No.92 of 2004 and the opponent No.2 in Cri.Rev.Appln.No.102 of 2004, Mr.R.R.Trivedi, learned counsel for the opponent No.4 in Cri.Rev.Appln.No.92 of 2004 and the opponent No.3 in Cri.Rev.Appln.No.102 of 2004.

11. Learned counsels appearing for the respective applicants have mainly argued the same which they have contended in their respective pleadings and since those contentions have been reproduced by me hereinabove, same are not repeated here again. They have taken me through the impugned complaint and xerox copies of various statements annexed by the State with its application consisting of the map of scene of offence and the telephone chart of the deceased. They have also taken me through the detailed affidavit filed by the investigating officer into the court below apart from the affidavits of complainant, injured eye witness and other witnesses. They have also taken me through the impugned order more particularly paragraph No.3 onwards.

12. The main contentions raised on behalf of the opponents-accused that are that the complaint has been lodged with the help of Vinubhai Singhala who is the arch enemy of Jayrajsinh Jadeja. The prosecution has changed the time of commission of offence to 10.00 p.m. at the influenced of Vinubhai for the purpose of narrowing down the delay and for coming out from the valid defense of alibi. The the complaint has been recorded by Shri Solanki and not by Mr.V.V.Gohil who, according to them, is not related of the accused. Since Vinubhai could not get the BJP ticket for MLA but Jayrajsinh Temubha Jadeja could get it, accused have been falsely involved in serious crime. As far as antecedents of accused No.1 are concerned, it is contended that in the cases at Sr.Nos.1 to 6 and Nos.9 and 10, he has been acquitted while cases at Sr.Nos.7,8 and 11 are pending for trial. There is a delay of about 5 hours in filing the FIR although police station is at a distance of about half a kilometer from the scene of offence and the time consumed by the complainant has been utilized in implicating the opponents-accused. The accused are not related to late Shri Vikramsinh Rana. There is no scope of tampering with the evidence as they consist of interested witnesses and expert evidence. Though it has been alleged in the

FIR that the accused have fired from the firearms held by them having double barrel guns, using of said arms have been changed in the further statement of the complainant as well as in the statement of another injured witness Ramjibhai Marakana apart from the fact that no injury has been caused due to firearms. The accused were in a function at the time of incident where one Senior Police Officer was also present. Since the accused No.1 was apprehending arrest, he did not appear pursuant to the summons issued to him under Sec.160 of the Code. The criteria for granting bail and cancellation thereof are quite different and only in rarest of rare cases, the measure for cancellation can be adopted. While deciding the application under Sec.438 of the Code, materials appearing on record are required to be taken into consideration and since it appeared that there are material contradictions in the materials so far collected by the prosecution and the accused were appeared to be falsely involved in the serious offence, discretion has been exercised by the court below in granting anticipatory bail and hence, this Court should not interfere with the same more particularly when said discretion does not appear to be perverse. However, if the court feels that some more conditions are required to be imposed for getting custodial interrogation of the accused, impugned order may be modified and conditions as are felt necessary may be imposed.

13. It is also contended on behalf of the opponents accused that anticipatory bail cannot be denied or cancelled focussing only on the seriousness of offence. In this connection, Mr.Shethna, learned Senior Counsel appearing for one of the accused in these revisions has placed reliance on an unreported judgment of this Court in Parsottam Manilal Patel Vs. Dwarkabhai Mohanbhai Patel and Others, 1994(1) G.L.H. (U.J.) 7. Relying upon another case of Abdul Hamit Ansari and Others Vs. State of Maharashtra reported in 2000 S.C.C. (Crimes) 1505, it is submitted that antecedents of the accused persons should not be taken into account while deciding the matter under Sec.438 of the Code.

14. In respect of accused Jayantibhai Savjibhai Dhol, it is contended by learned Senior Counsel, Mr.N.D.Nanavati, that he is a prominent person in the area and hence, question of his not identifying does not also arise. Though his name has not been mentioned in the FIR, he has been falsely implicated at the instance of his political enemy, Vinubhai Singhala.

15. Mr.R.R.Trivedi, learned counsel appearing for the

accused Amarjitsinh Anirudhsinh Jadeja has placed reliance upon the judgment dated 4-4-2002 delivered by this Court (Coram: B.J.Shethna,J.) in Cri. Misc. Appln.No.8881 of 2001, reported in 2002(3) G.L.R. 2768. Whereas Mr.P.M.Thakkar, learned counsel appearing for the original complainant has relied upon the case of Puran Vs. Rambilas and Another reported in (2001) 6 S.C.C. 338 wherein same point has arisen before the Apex Court. It has been held by the Apex Court in that reported case at head note 'C' as under:

> "Criminal Procedure Code, 1973--S.439(2)-Cancellation of bail--Grounds for--Held an order granting bail passed by ignoring material and evidence on record and without giving reasons, would be perverse and contrary to principles of law--Such an order would itself provide a ground for moving an application for cancellation of bail--Such ground for cancellation is different from the ground that the accused misconducted himself or some new facts call for cancellation."

It has also been held in the aforesaid reported case at head note 'F' as under:

> "Criminal Procedure Code, 1973--S.439(2)-Power of High Court to cancel bail--As High Court is a superior court in hierarchy of courts, its power under S.439(2) can also be exercised in relation to bail orders passed by Court of Session, not just those passed by any Magistrate--Contention rejected that High Court and Court of Session were coordinate courts for purposes of S.439(2) and therefore High Court could not sit in appeal or revision over an order of Court of Session."

Further, at head note 'G' it has been held as under:

> "Criminal Procedure Code, 1973--Ss.482 and 397(3)--High Court's inherent jurisdiction under S.482, held, remains unaffected by provisions of S.397(3)--Fact that the impugned order was an interlocutory order of the Court of Sessions, held, immaterial."

The power of the High Court and the scope of interference as a superior court in these types of matters have been specified in the aforesaid judgment by the Apex Court.

16. Before proceeding further, for the purpose of deciding these matters, I have gone through the judgments

relied upon by the learned counsels appearing for the respective parties. There cannot be any dispute regarding the principles laid down by the Apex Court as well as this Court in those judgments. Though main contentions have been raised by the opponents-accused in their respective affidavits, same have not been argued much by their learned counsels wherein the questions of maintainability of these applications and scope of interference by the higher forum once anticipatory or regular bail granted by the court below are involved.

17. On perusal of the impugned order, it seems that the contents of the order is running in four paragraphs. In the first paragraph, the contentions raised on behalf of the accused are narrated. In the second paragraph, the arguments of learned APP are narrated. In the third and fourth paragraphs, its findings have been mentioned.

18. It clearly appears from the order passed by the court below more particularly paras 3 onwards that while dealing with the matter, court below has stated that "there is an allegation of serious crime punishable with death or imprisonment for life. It is correct that the petitioners are having track record of crime. It is also true that the petitioners were not strange persons to identify." Relying upon the observations made in the draft report by the Law Commission, the court has stated that "there is a political rivalry and secondly the petitioners were closely associated with one Vikramsinh Rana who has been assassinated and one Ramji Marakana is the prime accused." The court has also stated that there is a difference in time factor referred to in the complaint, there is a diversion with regard to arms held by the accused persons as also presence of persons at the time of alleged incident, accused have deep roots in the society, permanent stay, social status and landed property in the jurisdiction of the Court. Having observed as aforesaid, relying only upon the draft report of the Law Commission and ignoring all the other relevant factors pointed out before it such as, Shri V.V.Gohil, CPI, who is a close relative of accused Amarjitsinh Anirudhsinh Jadeja, was present there and he influenced right from the stage of recording of the complaint; the complainant being an illiterate was not made aware of the time of incident mentioned in the FIR though incident happened at 10.00 p.m. and it was so mentioned in his further statement with specific role of the accused with respective weapons as well as in the statement of another injured eye witness Ramji Marakana narrating everything including the time of incident; accused No.1 did not respond to the summons issued under Sec.160 of the Code

to him and other material evidences on record namely, affidavits of complainant, injured eye witness as also of investigating officer filed in the proceedings, written submissions made on behalf of the prosecution with citations and law laid down by this High Court as well as the Apex Court, the court below has granted anticipatory bail to the opponents-accused which speaks volume. The court below has even not kept in mind the necessity of custodial interrogation, if any, of the accused by the investigating agency. Though the court has held in para 4 of the order that "The Police Officer at the same time is not made powerless to seek the custody of the accused under Sec.167(1) of the Code", in the operative part of the order, no permission was granted to the investigating agency for custodial interrogation in such a serious crime even though he mentioned about the seriousness of the offence reproduced hereinabove. Even while passing the order, court below did not also direct the accused to surrender before the authority as and when needed for investigation. Liberty has been granted rather to appear before the Police Officer within 30 days from the date of the order ignoring all the settled norms to be followed by every Judicial Officer in matters pertaining to Sec.438 of the Code.

19. It is apparent that attention of the court was drawn as to the seriousness of the offence wherein one person has lost his life and others were seriously injured due to fire arms freely used by the accused. Attention of the court below was also drawn towards the fact that the accused are not available at their known residential addresses and also the fact the weapons and other muddamal articles used in the commission of offence are yet to be recovered from the accused and hence, if anticipatory bail is granted at a stage when investigation is far from complete in a case where custodial interrogation of the accused is a necessity, it will impede the progress of investigation. Attention of the court below was also appears to have drawn towards certain judgments which it was otherwise also bound to deal with. However, none of these aspects have been considered by the court below while passing the impugned order.

20. It also clearly appears that undue weightage has been given by the court below on the alleged defense of alibi of the accused which has not been accepted by the Apex Court while laying down the law in a case of Naresh Pal Singh Vs. Raj Karan and Another reported in 1999(4) Crimes 124 (S.C.). It has been held therein by the Apex Court in paragraph 2 as under:

"The High Court appears to have accepted the plea of the accused that he was on election duty at the relevant point of time and, accordingly, has released him on bail. No attention has been focussed with regard to the nature of the offence and any other materials. Such an order on the face of it cannot be sustained."

21. The Apex Court has held as regards antecedents in the case of Omar Usman Chamodia Vs. Abdul and Another reported in 2004(2) SCALE 193 as under:

"From the material on record, we notice that there are atleast 7 other cases pending against the first respondent involving offences under Section 3 & 4 of TADA, Sections 25 and 27 of the Arms Act and Sections 506(2), 325, 324, 30, 147, 326, 504 etc. of IPC, apart from offences under the Prohibition Act. It is also an admitted fact that the complaint in the present case is made against the first respondent and others when first respondent was on bail granted to him in other cases. It is also an admitted fact that in one of the cases bail granted to the first respondent has been cancelled by the learned Sessions Judge on the ground that he has violated the conditions of bail. We are informed at the bar subsequently he has come out on bail in that case also. Be that as it may from the nature of allegations made in this case which involves the death of one of the victims and from the nature of weapon used in the said crime and in background of the fact that admittedly atleast 7 other cases involving very serious charges against the respondent are pending trial, some of them committed after obtaining bail in other cases tentatively atleast indicates for the purpose of considering the merits of this appeal that the first respondent herein has violated the conditions of bail granted in the earlier case and in the event of he being enlarged on bail there is every likelihood of he interfering with the investigation of this case, threatening the witnesses and may even got he extent of causing physical harm to the complainant and others. Having perused the material on record and the judgment of the Sessions Court cancelling the bail in another case, we are satisfied that this is a fit case in which the bail granted to the first respondent by the High Court should be

cancelled and we intend doing so."

It is to be noted that in the present case the accused are on bail in the previous crime and are alleged to have committed the offence in question during that period. In this view of the matter, even though antecedents of the present accused on record are kept in mind by court below, it thought it fit to grant anticipatory bail to the accused.

22. In anther case of Kiran Devi Vs. State of Rajasthan and Another reported in 1987(Suppl) S.C.C. 549, the Apex Court has held as under:

"We are of the opinion that anticipatory bail should not have been granted in the murder case when the investigation was still incomplete. The proper course to adopt was to leave it to the trial court to do the needful if and when the person concerned was arrested in the light of the record available at the point of time."

What is laid down by the Apex Court in the aforesaid case is that in a serious offence like murder, anticipatory bail should not be granted at the initial stage of investigation.

23. It appears that undue weightage has been given by the court below on difference in time factor, diversion with regard to the fire arms, point of alibi and status of person by discarding all other prima-facie materials on record in passing the order without assigning reasons. Reliance was placed by the prosecution before the court below on a case reported in (1985) 2 S.C.C. 597 in the case of Pokar Ram Vs. State of Rajasthan and Others before the court below in its written submissions. The fact of the case on hand is similar to that case wherein FIR was lodged alleging that accused, the 2nd respondent, caused gunshot injury to the deceased. Besides other offences, offence under Sec.307 IPC was registered but the accused was not arrested. Since the deceased succumbed to the injuries, Sec.302 IPC was added against the accused. Accused moved application under Sec.438 of the Code before the Sessions Court. Sessions Court granted bail and High Court held that the case for cancellation was not made out. Allowing the Special Leave Petition, the Apex Court has held in para 9 as under:

"When a person is accused of an offence of murder by the use of firearm, Court has to be careful

> and circumspect in entertaining an application for anticipatory bail. Relevant considerations are conspicuous by silence in the order of the learned Sessions Judge. Could it be said in this case that the accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive? Could it be said that the object being to injure and humiliate the respondent by having him arrested? What prompted the learned Sessions Judge to grant anticipatory bail left us guessing and we are none the wiser by the discussion in the order of the learned Single Judge declining to interfere."

The fact of the present case is quite similar to the case of Pokar Ram's case. It appears that said judgment though cited before it by the prosecution has not been taken into consideration by the court below and granted anticipatory bail to the accused coming to the conclusion that there is a political rivalry, accused have been falsely involved in the crime in question on flimsy ground, they have got roots in the society and will be available for trial.

24. As far as accused Jayantibhai Savjibhai Dhol is concerned, it is true that his name has not been disclosed in the FIR but has been disclosed immediately in the statement of eye witness Ramji Marakana and also in the statement of complainant and others. The way in which the incident has taken place suggests that firearms have been freely used by the accused and considering the time of incident and the mental condition of the concerned person at the time of incident, if he is not named in the FIR at the initial stage but has been named immediately in the statement of injured eye witness, it cannot be said that he has been falsely involved into the crime in question when his alleged role and presence has been specifically mentioned apart from the fact that he is not a stranger.

25. From the aforesaid, prima-facie it is established that accused who are facing serious offences punishable under Secs.302, 143, 147, 148, 149, 341 of Indian Penal Code, Sec.25(1)(A) of Arms Act and Sec.135 of the Bombay Police Act wherein investigation is at the initial stage. As per the law laid down by this Court as well as the Apex Court, generally the Court should not grant anticipatory bail in such a serious offence without applying mind and also without considering the material evidences on record as well as considering the pros and cons of passing such an order. Here in this case, court

below, as stated hereinabove, has ignored all the materials evidence on record connecting the opponents-accused with the crime in question wherein one person has lost his life and others have received serious injuries. Even panchnama of scene of offence and panchnama of Utility car jeep show various marks of firing done by the accused. The map of scene of offence reveals that the incident has taken place in the heart of Gondal City where the assailants were numbering 15 with deadly weapons like fire arms, etc. which prima-facie shows the seriousness of the offence.

26. In view of the above, I am of the opinion that the factors such as difference in the time of incident, alibi, change in weapons and status of accused prima-facie cannot be considered at this stage in view of the fact that at the earliest opportunity by way of statements and further statement of injured eye witness and other evidences, names of the accused with their specific roles together with their respective weapons have been disclosed and also the fact that since the incident has taken place in a terrorized manner, witnesses would not be able to identify each and every person at that point of time apart from the fact that investigation is still incomplete. These will be their defense which would be available to the opponents-accused at the time of trial. When there is ample prima-facie evidence on record connecting the accused with the crime in question, ignoring all these aspects, without assigning cogent reasons, the court below has given undue weightage to these factors. The said act of learned Judge in granting anticipatory bail is unjust, illegal, improper and perverse as has been held by the Apex Court in (2001)6 S.C.C. page 338. In these circumstances, I am unable to accept the arguments advanced on behalf of the opponents-accused that these are relevant for the purpose of deciding the matters under Sec.438 of the Code.

27. Having regard to the above facts and circumstances of the case, I am of the opinion that the order passed by the court below is unjust, improper, illegal and without assigning reasons and perverse and, therefore, it cannot stand even for a moment.

28. Thus, these revisions applications are allowed. The order dated 17-2-2004 passed by the learned Addl. Sessions Judge, Gondal, in Cri. Misc. Appln.No.28 of 2004 under Sec.438 of the Code is quashed and set aside. Opponents-accused are directed to appear before the investigating agency failing which, authority is at

liberty to take necessary steps. Rule is made absolute.

29. As the observations by this Court in this judgment being prima-facie ones made for the purpose of deciding these revision applications, same shall not prejudice the parties in any other proceedings.

30. Office is directed to place a copy in each revision application.

(R.P.DHOLAKIA,J.)

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Further Order

After pronouncement of this judgment, Mr.N.D.Nanavati, learned counsel appearing for one of the accused requested for staying the order. Looking to the fact that the order in question which has been quashed by this Court is pertaining to Sec.438 of the Code and also considering the seriousness of the offence, request is rejected.

(R.P.DHOLAKIA,J.)